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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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29157	7590	11/06/2003	EXAMINER	
BELL, BOYD & LLOYD LLC			MADSEN, ROBERT A	
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CHICAGO, IL 60690-1135			PAPER NUMBER	

1761

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/990,736

Applicant(s)

ALBUJA ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 4006820). Smith teaches a housing (i.e. items 10 and 2 in combination) with first/dry pet food, a second/wet pet food including water, a lid (i.e. sealed portion about opening 14) for the dry compartment removably attached to the housing so that the removal of the lid causes the mixing of the two food items (Abstract, Figures, Column 1, lines 5-19, Column 2, lines 9-27).

3. Claims 18, 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 4006820). Smith teaches providing a housing (i.e. items 10 and 2 in combination) with first/dry pet food, a second/wet pet food including water, a lid (i.e. sealed portion about opening 14) for the dry compartment removably attached to the housing so that the removal of the lid causes the mixing of the two food items in a bowl (i.e. item 10) that is suitable for serving the foods since it is capable of holding both foods, as recited in claims 18-23, (Abstract, Figures, Column 1, lines 5-19, Column 2, lines 9-27).

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4. Claims 13-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sobky (US 4249483). See Abstract, Figures, Column 2, lines 23-41, Column 3, lines 2-40, wherein the bowl is taken to be item 10, two different pet foods comprise items 16 and 18 in Figure 1 (i.e. water is considered a wet food), and the member comprises item 58, which extends from the rim as shown in Figure 3.

5. Claims 13 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kornacki (US 5925390). See Column 1, lines 48-67, Column 2, lines 1-32, Figures.

6. Claims 18, 21-24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lepper (US 3137272). Note the housing is understood to be items 11 and 10, the lid is item 11, the second/wet food is water, and after mixing the bowl (item 54) houses and is suitable for both foods. See Figures, Column 1, lines 8-17, 50-55, 63-69, Column 2, lines 14-28, 38-54, Column 3, lines 1-14, 28-40, and column 3, line 64 to Column 4, line 12.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2,4,7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable Smith (US 4006820) as applied to claims 1 and 5 above, further in view of further in view of Davidson et al. (GB 2337976 A) and Bosshard (US 4836370).

9. Regarding claims 2, 7-11, Smith teaches a second pet food package (e.g. vessel 10), which is located above the first pet food, is automatically ruptured (i.e. the seal between items 2 and 10) when the lid of the first pet food is removed for mixing, but is silent teaching the second pet food package is located *underneath* the lid of the *container* as recited in claim 11, ruptures when the lid *of the container* is removed as recited in claim 7 by a tear line as recited in claim 8 or by the lid buckling as recited in claim 9, or that the lid punctures the packages as recited in claim 10. Although Smith teaches the dry food compartment is plastic, Smith is silent in teaching the entire container is plastic as recited in claim 2 (Abstract, Figures, Column 1, lines 5-19, Column 2, lines 9-27).

10. Davidson et al. also teaches a container for mixing dry and wet foods. Davidson et al. teach the container comprises a dry food, a second wet food in a separate package positioned above the dry food, and a lid that automatically ruptures the second wet food package to disperse and mix the two foods together. However, unlike Smith, the second wet food is located under the lid of the container as recited in claim 11, the lid that automatically ruptures the second package serves as the *container's* lid as recited in claim 7 at a frangible connection where it is predisposed to tear as recited in claim 8. Davidson et al. further teach the entire container is plastic as recited in claim 2

(Abstract, Figure 1, Page 1, line 5 to Page 2 line 6, Page 8, lines 29-37, Page 9, lines 26-35).

11. Bosshard is relied on as further evidence of the conventionality of a container comprising a dry food, a second wet food in a separate package positioned above the dry food and below the container's lid, and the container lid automatically ruptures the second wet food package when the lid is opened, as recited in claims 7 and 11, using a weak place in the package predisposed to tear as recited in claim 8. Bosshard, however, further teaches the lid buckles to cause the package to rupture as recited in claim 9 (e.g. Figure 7b) and includes puncturing the liquid food package with the lid, as recited in claim 10 (See the embodiments depicted in Figures 1-6, 7a, 7b, Column 1, lines 8-32, Column 2, lines 9-41, Column 3, line 57 to Column 4, line 37, Column 5, line 44 to Column 6 line 5).

12. Therefore, it would have been obvious to modify Smith and form a plastic container, as recited in claim 2, since Davidson teaches this is a suitable material for a container used to mix a liquid and dry food and one would have been substituting one conventional material for another for the a container with the same intended purpose. It would have also been obvious to modify Smith and include the second wet food is located under the lid of the container as recited in claim 11, the lid that automatically ruptures the second package serves as the *container's* lid as recited in claim 7, along a predisposed tear line or frangible connection, since Davidson et al. and Bosshard both teach this as a means of mixing a packaged liquid food with a dry food and one would have been substituting one package design for another for the same purpose: mixing a

liquid food and dry food in the same container wherein the liquid food is in a separate package that is ruptured to dispense the liquid over the dry food. It would have been further obvious to provide a lid that buckles to cause the package to rupture or to provide a lid that punctures the package, as recited in claims 9 and 10, since Bosshard teach these are also effective methods for rupturing a wet food package held above a dry food package for mixing purposes and one would have been substituting one method of rupturing the wet food package for another for the same purpose.

13. Regarding claim 4, Smith is silent in teaching the lid is resealable. However, Davidson et al. teach a lid comprising a complimentary lip to the container for sealing and a hinge for opening and closing, and Davidson et al. teach the lid is releasably sealed (Page 6, lines 1-37). Thus, Davidson et al. teach a resealable lid. Therefore, it would have been obvious to modify Smith and include a resealable lid since one would have been substituting one container design for another for the same purpose.

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable Smith (US 4006820) as applied to claims 1 and 5, further in view of Kirkland (US 6006945).

15. Smith is silent in teaching a vending machine package. Kirkland teaches it is desirable to size multi-compartment containers and pet food containers to be dispensed from a vending machine so that such items may be readily available to consumers from conventional vending machines and conventional vending machine locations (Column 1, lines 2-35, Column 2, lines 6-67, Column 5, lines 45 to 65). Therefore it would have been obvious to further modify Smith and have the housing

sized to fit in a vending machine, since Kirkland teaches it is desirable to provide multi-compartment and pet food containers in vending machines. One would have been substituting one type of pet food or multi-component housing shape for another.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable Smith (US 4006820) as applied to claims 1 and 5, further in view of Geitner (US 5346710).

17. Smith teaches housing providing both dry pet food and wet pet food, such as water, but is silent in teaching semi-dry pet food. Geitner is relied on as evidence of the conventionality of providing either dry or semi-dry (i.e. semi-moist) pet food with water in the same housing (Abstract, Column 1, lines 48-60, Column 2, lines 13-47).

18. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable Smith (US 4006820) as applied to claims 1 and 5, further in view of Lilley et al. (WO0135925 A1)

19. Smith teaches housing providing both first pet food and a second pet food, such as water, but is silent in teaching the second is a medicated food. Lilley et al. teach adding medicated food, which maybe either a wet or dry food and in a separate package, to pet food (Page 3, line 23 to Page 4, line 20, Page 5, lines 14-15).

Therefore, it would have been obvious to modify Smith and include medicated wet food as the wet food portion of the package since one would have been substituting one conventional wet food product for another for the same purpose: mixing with a standard pet food product.

20. Claims 13,16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foreman et al. (US 2010048955 A1) in view of Kornacki (US 595390).

21. Foreman et al. teach two different pet foods in a microwavable single feeding bowl (i.e. tray with a lid), as recited in claims 13,16, and 17, but are silent in teaching a member extending from the lid for removal (Page 2, 0012-0018). Foreman et al. are silent in teaching a member extending from the lid for grasping.

22. Kornacki also teaches multi-compartment pet food bowls, and further teaches adding a pull tab to the cover to assist in removing the cover (See Column 1, lines 48-67, Column 2, lines 1-32, Figures). Therefore, it would have been obvious to include a pull tab on the bowl of Foreman et al. since this would facilitate the removal of the lid and one would have been substituting one conventional lid design for another for a compartmented sealed pet food bowl comprising different foods.

23. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable Smith (US 4006820) as applied to claims 18,21-24 above, further in view of Davidson et al. (GB 2337976 A) and Bosshard (US 4836370).

24. Regarding claims 19 and 20, Smith teaches a second pet food package (e.g. vessel 10) that is automatically ruptured (i.e. the seal between items 2 and 10) when the lid of the first pet food is removed for mixing, but is silent teaching the second pet food package automatically ruptures when the lid of the container is removed, and the container is suitable for a retail outlet, as recited in claims 19 and 20 (Abstract, Figures, Column 1, lines 5-19, Column 2, lines 9-27).

25. Davidson et al. also teaches a container for mixing dry and wet foods. Davidson et al. teach the container comprises a dry food, a second wet food in a separate package positioned above the dry food, and a lid that automatically ruptures the second wet food package to disperse and mix the two foods together. However, unlike Smith, the lid that automatically ruptures the second package serves as the container's lid, as recited in claim 19. Davidson et al. further teach the containers are similar to those for snack foods (e.g. yogurt), in-flight and hospitals, wherein the food is eaten directly from the container so that the packaging is not disposed of until the food is finished, which are conventionally distributed to supermarkets as recited in claim 20 (Abstract, Figure 1, Page 1, line 5 to Page 2 line 6)

26. Bosshard is relied on as further evidence of the conventionality of a container comprising a dry food, a second wet food in a separate package positioned above the dry food, and a lid that automatically ruptures the second wet food package to disperse and mix the two foods together wherein the lid that automatically ruptures the second package serves as the container's lid. (See the embodiments depicted in Figures 1-6, 7a, 7b, Column 1, lines 8-32, Column 2, lines 9-41, Column 3, line 57 to Column 4, line 37).

27. Therefore it would have been obvious to modify the method of manufacturing the pet food container of Smith and include a second food package wherein the lid that automatically ruptures the second package serves as the container's lid, as recited in claim 19 since Davidson et al. and Bosshard both teach this as a method of mixing in a single container comprising a dry food, a second wet food in a separate package

positioned above the dry food, and a lid that automatically ruptures the second wet food package to disperse and mix the two foods together. One would have been substituting one second wet food package design for another for the same purpose.

28. It would have been further obvious to include distributing the container to a retail outlet such as a supermarket, since Smith teaches the container includes a sealed dry food and Davidson et al. teach it is well known to distribute sealed food packages that are intended for mixing a wet food and dry food.

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ciguere (US 6568347 B2) teach a separate wet food package for mixing with a dry food. Falcone (WO 9419257 A2), Falcone (WO9519725 A1), and Warnsdorfer et al. (US 3057536) teach housing containing a dry food and a separately packaged wet food, wherein mixing of the two foods comprises removing the lid and rupturing the wet food package.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

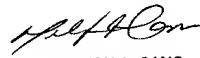
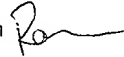
31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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32. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
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